

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1923 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 and 2 Yes  
3 to 5 No

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GAYATRI GRAM AROGYA MANDAL

Versus

NAYANABEN JASHBHAI PATEL

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Appearance:

MR CL SONI for Petitioner

MR KG SHAH for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/04/97

ORAL JUDGEMENT

1. The respondent is a qualified Doctor and it is the common case of the parties that after inviting applications on 1.4.87 the respondent Dr.Nayanaben Jashbhai Patel was appointed by Gayatri Gram Arogya Mandal at Nanadara as a Medical Officer on a monthly salary of Rs.2360/-. It is also the common case of the parties that the services of the respondent - Medical

Officer were terminated on 9.11.87. The respondent raised the dispute alleging that she had been exploited and victimized because she claimed the salary at par with the salary which is paid to the Medical Officers in the Government service and only for that reason her services were terminated. A grievance was also raised that no salary had been paid to her for certain months and she was told that the amount of grant had not been sanctioned.

2. On 9.11.87 a cheque for a sum of Rs.2000/- was given to the respondent and by an oral order she was sacked from the services. A Reference was made for adjudication to the Labour Court, Nadiad. Gayatri Gram Arogya Mandal i.e. present petitioner did not file any reply to the statement of the claim made by the respondent. The Notice had also been sent by Registered Post Acknowledgement Due but the petitioner did not contest the claim. The respondent was examined on oath but nobody turned up on behalf of petitioner for her cross-examination. The petitioner also did not lead any oral evidence whatsoever and nobody appeared on behalf of the petitioner even at the time of the final arguments, no evidence was led by the petitioner before the Labour Court. In such circumstances, the Labour Court believed the version of the respondent and granted the relief of reinstatement with backwages. This Award dated 1.2.95 passed by the Labour Court, Nadiad has been challenged by the petitioner - Gayatri Gram Arogya Mandal before this Court through this Special Civil Application on several grounds including the ground that Reference before the Labour Court itself was not competent as the respondent was not a workman and the Award should be quashed and set aside on this ground alone.

3. In view of the decision of this Court reported in 1988 Lab.I.C. 505, Govindbhai v. N.K. Desai, wherein a reference has been made to a Division Bench judgment of this Court rendered in Special Civil Application No.3063 of 1986 decided on 18.6.86 whereby the Division Bench found that a Doctor, who was doing part time job for over 18 years, can be easily considered as a workman coming under the definition of 'Workman' under the Industrial Disputes Act and the honorarium paid will squarely come under the definition of 'wages' under S.2(rr) of the Industrial Disputes Act, this case was adjourned granting time to Mr.Soni to cite Supreme Court decision on the point holding that Medical Officer is not a workman. On 20.3.97 when the matter came up before this court Mr.Soni cited JT 1996(9) S.C. 721, Management of Heavy Engineering Corporation Ltd. v. Presiding Officer,

Labour Court and others, and the Rule was issued while staying the operation of the Award in the meantime. The respondent has filed the reply seeking to traverse the claim of the petitioner.

4. Today when the matter came up before the Court, arguments were addressed on behalf of both the sides at length and, therefore, I deem it appropriate to decide this matter right today.

5. True it is that the Division Bench in Special Civil Application No.3063 of 1986 decided on 18.6.86 had held that a Doctor doing part time job for over 18 years could be considered as a workman as has been quoted in the reported decision in the case of Govindbhai v. N.K. Desai (Supra), the Supreme Court in Management of Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court and others (Supra) has considered this question. In the case before the Supreme Court, the contention was raised that the respondent No.2, who was a Doctor, could not be regarded as a 'workman' within the meaning of S.2(s) of the Act. At the relevant time the total monthly emoluments of that respondent-Doctor were in excess of Rs.1200/- and he was working in a supervisory capacity and, therefore, he could not be regarded as a 'workman'. This contention was opposed on the ground that duties, which have been performed by the respondent No.2 - Doctor, could not be regarded as supervisory. Reliance was placed on a decision of the Allahabad High Court in the case of Dr. Surendera Kumar Shukla v. Union of India and others, reported in 1986 Lab.I.C. 1516. The question, which was considered by the Allahabad High Court was as to whether the Assistant Medical Officer, Class-II appointed in the Railway, could be regarded as a 'workman' to whom the provisions of S.25-F of the Act would be applicable. In the case before the Allahabad High Court, the duties of the Assistant Medical Officer were not only to treat railway patients but according to the Indian Railway Manual, he was also to "meet other administrative requirements where he is in-charge of a hospital or a health unit or any other institution" and he was also responsible for its establishment and administration. The Allahabad High Court held that the primary purpose of employing the Assistant Medical Officer was to treat the patients and that the duties of the Doctor were technical and that any supervisory function which such Doctor exercised was only incidental to the discharge of his duties and, therefore, it could not be said that he was employed in a supervisory capacity within the meaning of S.2(s) of the Act. The Supreme Court after considering the decision of

the Allahabad High Court, in the case of Management of Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court and others (Supra) held that the conclusion so arrived at by the Allahabad High Court was not correct. The duties of a Doctor require that he should perform supervisory function in addition to his treating the patients and that would mean that he had been employed in a supervisory capacity. The Supreme Court also observed that the Railway Manual clearly stipulated that the Assistant Divisional Medical Officer would be responsible for the establishment and administration of the Hospital or the health unit and that would obviously mean that the Assistant Divisional Medical Officer was employed in a supervisory capacity. The Supreme Court in this very Judgment also considered a decision of the Assam High Court reported in AIR 1961 Assam 30 in the case of The Bengal United Tea Co. Ltd. v. Ram Labhaya, Presiding Officer, Industrial Tribunal, Assam and others and observed that this case was of no assistance to the respondent - Doctor because in that case the only question, which was considered was whether the functions discharged by the Medical Officer were of technical nature or not. Assam High Court came to the conclusion that the Medical Officer discharged technical duties and, therefore, was a 'workman' within the meaning of S.2(s) of the Act, but the Supreme Court observed that the Assam High Court did not have an occasion to consider the question as to whether the Medical officer in that case was employed in a supervisory capacity or not and, therefore, the decision of the Assam High Court was found to be of no relevance to the controversy in the case before the Supreme Court. The Supreme Court also considered in this case that the respondent-Doctor had been appointed alongwith other Doctors and was posted at the First Aid post and alongwith him one dresser was working and the main duty of the respondent Doctor was to give first aid to the workers on duty. While it was stated by the respondent-Doctor that he never sanctioned the casual leave of the dresser, who was working with him, in the latter part of his statement it was recorded that 'in the year 1978 and 1979 he had counter-signed on the casual leave register'. It was also stated by the respondent-Doctor that, "the dresser used to work with him alongwith three dressers and two labourers" but it was categorically stated that he was not doing supervisory work. One of the witnesses, who had appeared on behalf of the Management, stated that the in-charge of the First Aid post is a Doctor on duty and the male nurse, nursing attendant, sweeper and ambulance driver are subordinate to this in-charge. In view of these facts, the Supreme Court found that the respondent-Doctor

could not be regarded as a 'workman' under S.2(s) of the Act while it was true that the respondent-Doctor alongwith other Doctors used to work in shifts nevertheless during the time when he was in the shift he was the sole person in-charge of the First Aid post. He had under him a male nurse, nursing attendant, sweeper and ambulance driver who would naturally be taking directions and orders from the in-charge of the First Aid post. These persons obviously could not act on their own and had to function in the manner as directed by respondent - Doctor whenever he was on duty. They were, in other words, under the control and supervision of the respondent-Doctor. The Supreme Court also observed that when a Doctor like the respondent, discharges his duties of attending to the patients and, in addition thereto supervises the work of the persons subordinate to him, the only possible conclusion which can be arrived at is that the respondent cannot be held to be regarded as a 'workman' under S.2(s) of the Act.

6. The analysis of the cases, as aforesaid, shows that while the case of a Doctor on part time job for a long period being treated as a 'workman', as has been held by the Division Bench of this Court apart, the touch stone to be found as to whether a Doctor employed on whole time basis should be regarded as a 'workman' or not would mainly depend upon the nature of the duties, which are effectively discharged by him as a whole time Doctor. If the discharge of such duties includes effective supervisory duties, not merely incidental to the discharge of his duties of patient care or as an adjunct to his duties as a Doctor, and he is employed in a supervisory capacity having effective control over the management and administration of any Hospital or Health Unit he may be regarded as a workman in a given case - meaning thereby that unless the employment of a Doctor is in a supervisory capacity as Medical Officer and in fact he discharges supervisory work, he can not be regarded as a 'workman' within the meaning of S.2(s) of the Act. Thus, it is clear that whether a Doctor should be treated as a 'workman' or not is a question of fact depending upon the material, which is made available with reference to the nature of employment involving effective supervisory duties otherwise than as incidental or adjunct to the post of Doctor, and merely by saying that he is a Medical Officer he can not be considered as a 'workman'.

7. In the case at hand, I find that the petitioner-Gayatri Gram Arogya Mandal did not raise any such plea before the Labour Court and did not even care

to contest the claim of the respondent-Doctor on the ground that she did not discharge any supervisory duties and was, therefore, not a workman. It is for the first time that this objection has been taken before this Court and that too by making a bald averment in the pleadings. In normal course, the Court would not have even permitted the petitioner to raise such a plea, which requires an inquiry of facts, but keeping in view the fact that such an objection goes to the root of the matter and also keeping in view the importance of the question as to in what circumstances a Doctor or Medical Officer can be regarded as a 'workman', I feel inclined to remand the matter back to the Labour Court for a decision afresh. It will be open for the petitioner to raise the plea, as aforesaid, including the other grounds, which may be available to the petitioner and it will also be open for the respondent-Doctor to revise her statement of claim and it will also be open for both the parties to lead evidence on all the issues de novo and only thereafter the Labour Court, Nadiad shall decide the matter afresh in accordance with law.

8. While remanding the matter, keeping in view the fact that the respondent-Doctor was terminated way back in 1987 and the further fact which has been pointed out on behalf of the respondent-Doctor that at present also she is doing only a honorary job for a meagre honorarium and the further fact that the matter is being remanded because of the lapse on the part of the petitioner-Mandal, which did not raise the objection, which has been raised before this Court for the first time and that it did not effectively participate in the proceedings before the Labour Court earlier and has thus made the respondent to suffer the agony of litigation, rather a prolonged litigation, and also keeping in view the fact that the grievance has been raised by the respondent that she had not even been paid salary for certain months during the course of her employment with the petitioner and whereas it has been alleged that even the cheque of Rs.2000/-, which was given to her at the time of termination was dishonoured, I deem it appropriate to remand the matter on the condition that the petitioner pays a sum of Rs.10,000/- to the respondent against the cost. Mr. Soni has submitted that reasonable time may be granted for making the payment of the cost and on his prayer, four weeks time from today is granted to the petitioner for making payment of the cost of Rs,10,000/to the respondent.

9. The upshot of the aforesaid discussion is that the impugned Award passed by the Labour Court, Nadiad in

Reference (L.C.N.) No.136 of 1988 dated 1.2.95 is hereby quashed and set aside. The Labour Court to proceed with the matter de novo from the stage of the filing of the revised statement of claim and the statements of claim by the parties and shall adjudicate the Reference afresh without being influenced by anything said or observed and mentioned in the Award dated 1.2.95. Since this is an old matter, it is expected that the Labour Court, Nadiad shall give priority to this case and it is also expected from the parties that they would cooperate in the matter. The remanded proceedings shall commence before the Labour Court only after the petitioner produces the receipt of the payment of cost of Rs.10,000/- to the respondent-Doctor and only thereafter the concerned Labour Court shall adjudicate the matter and pass appropriate orders in accordance with law as expeditiously as possible and preferably within a period of six months from the date the remanded proceedings commence. This Special Civil Application is accordingly allowed. Rule is made absolute in the terms as aforesaid with order with regard to costs, as above.